

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DESIRAYE DEBRA ROOT,

Defendant-Appellant.

UNPUBLISHED

May 11, 2004

No. 244319

Montcalm Circuit Court

LC No. 02-000462-FH

Before: Gage, P.J., and O'Connell and Zahra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree home invasion, MCL 750.110a(3). The trial court sentenced defendant as a second habitual offender, MCL 769.11, to eight to thirty years' imprisonment. Defendant appeals as of right. We affirm.

I. Facts and Procedure

In November 2001, Shawn Thayer told defendant that her parents, Richard and Dawn Thayer, were going away for Thanksgiving weekend, so their house would be empty. Defendant was on an electronic police tether at the time and needed permission to leave the area where she was monitored. On November 23, 2001, defendant received permission to leave the tethered area between 8:30 a.m. and 4:30 p.m. for a doctor's appointment. Instead of going to a doctor's appointment, defendant and her roommate, Nichole Houck, broke into the Thayer residence, knowing that nobody would be home. Defendant took several items from the home, including two credit cards. Defendant made several purchases with the credit cards and sold the purchased items for cash. Defendant later told Houck that her probation officer had discovered that she had not gone to the doctor's appointment on November 23, 2001. Sometime after November 23, 2001, defendant and Houck decided to drive Houck's car to Texas for a few days to visit defendant's grandmother. From Texas, they went to Tennessee for a few days and then went back home to Michigan separately. On January 21, 2002, defendant turned herself in to the police and admitted breaking in to the Thayer home and stealing several items.

II. Analysis

Defendant argues that the trial court abused its discretion in denying her motion in limine to exclude the introduction of evidence of her flight to Texas. "The decision whether to admit evidence is within the trial court's discretion and will not be disturbed absent an abuse of that

discretion.” *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003). Evidence of flight is admissible to show consciousness of guilt. *People v Goodin*, 257 Mich App 425, 432; 668 NW2d 392 (2003). The term “flight” has been applied to the act of leaving the jurisdiction. *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995), citing 29 Am Jurisdiction 2d, Evidence, § 532, p 608. In *People v Cutchall*, 200 Mich App 396, 399-401; 504 NW2d 666 (1993), this Court held that evidence that the defendant fled to Florida after committing the crime was admissible.

Defendant argues that the evidence of defendant’s trip to Texas and Tennessee was inadmissible, because there was no evidence that her trip constituted “flight,” or that she left Michigan in an effort escape from the police or conceal her whereabouts. We disagree. Regardless whether defendant’s flight from Michigan was an innocent trip or a flight from the jurisdiction or the police, there is no dispute that defendant fled from Michigan. “It is true that ‘flight from the scene of a tragedy may be as consistent with innocence as with guilt;’ but it is always for the jury to say whether it is under such circumstances as to evidence guilt.” *Cutchall*, *supra* at 398, quoting *People v Cipriano*, 238 Mich 332, 336; 213 NW 104 (1927). Here, as the trial court instructed the jury, it was the jury’s duty to determine whether defendant’s flight from Michigan was for innocent reasons or because she had a guilty state of mind. Defendant’s argument that she did not leave Michigan to flee from police does not affect the admissibility of the evidence, but relates to the weight of the evidence, which is a question of fact for the jury. Furthermore, even if the trial court abused its discretion in admitting the evidence of defendant’s flight, defendant has failed to show that it is more probable than not that the admission of this evidence caused a miscarriage of justice. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

Affirmed.

/s/ Hilda R. Gage
/s/ Peter D. O’Connell
/s/ Brian K. Zahra